THE

FUGITIVE SLAVE LAW,

ITS CHARACTER FAIRLY STATED—ITS CONSTITUTIONALITY AND REASONABLENESS VINDICATED—AND THE DUTY OF MAINTAINING AND ENFORCING IT ESTABLISHED AGAINST THE MISREPRESENTATIONS, SOPHISTRY, AND SEDITIOUS AGITATIONS OF DEMAGOGUES AND ABOLITIONISTS.

VIR BONUS EST QUIS? QUI CONSULTA PATRUM, QUI LEGES JURAQUE SERVAT.

"The very idea of the power and the right of the people to establish government, presupposes the duty of every individual to obey the established government. ALL OBSTRUCTIONS TO THE EXECUTION OF THE LAWS, ALL COMBINATIONS AND ASSOCIATIONS, UNDER WHATEVER PLAUSIBLE CHARACTER, WITH THE REAL DESIGN TO DIRECT, CONTROL, COUNTERACT, OR AWE THE REGULAR DELIBERATION AND ACTION OF THE CONSTITUTED AUTHORITIES, ARE DESTRUCTIVE TO THIS FUNDAMENTAL PRINCIPLE, AND OF FATAL TENDENCY."—*Washington's Farewell Address.*

PREFATORY.

The articles which are collected in this pamphlet have appeared in the REPUBLIC newspaper, and were written with the view of calling the attention of good men and good citizens to the nature and tendency of the present agitation against the Fugitive Slave Law. They are now reprinted, with the addition of the very able opinion of the ATTORNEY GENERAL on one branch of the subject, in a form convenient for perusal and reference.

For this pamphlet, the writer ventures to ask that it may be read with the spirit proper to rational and patriotic men—not with that impatient and contemptuous egotism which at once condemns and throws aside whatever may appear opposed to its own notions and wishes—but with a conviction that all men are liable to error, and a consequent readiness, on proper occasions, to re-examine the grounds of every opinion, and with a resolute purpose to embrace the truth, however unwelcome or unexpected, so soon as it shall be established by sufficient authority of reason.

Thus read, the writer dares to entertain a confident hope that it will not prove useless to the reader; for, although his own part of the work is by no means worthy of the great subject to which it alludes, or the solemn occasion which has called it forth, yet, while he knows that he has sought the truth with diligence and fairness, he presumes to think that he has succeeded in finding it. And with this remark he submits to the judgment of candid and thinking men the arguments and illustrations with which he has sought to establish and enforce his views—sure that they will discover nothing disingenuous in argument or false in statement; and believing that what he has undertaken will be found established by such just and satisfactory reasoning as should command assent and approbation.

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THE FUGITIVE SLAVE LAW.

The Fugitive Slave Law and the Trial by Jury.

In our paper of the 24th, we gave to our readers the clear and unanswerable opinion of the Attorney General upon one of the objections urged against the Fugitive Slave law lately passed by Congress; to wit, that it suspended the privilege of the writ of *habeas corpus*. That opinion must set this objection at rest forever; and we now recur to the subject, according to an intimation then given, for the purpose of offering some remarks of our own upon an objection not particularly embraced by that opinion, which is, that the act is in violation of the Constitution because it does not give the fugitive a right of trial by jury in the State in which he may be arrested.

We address what we have to say, not to the supporters of the "higher law" doctrine—not to those who affect themselves to believe, or have been persuaded by others in fact to believe, that a man can swear to support the whole Constitution, and yet while he refuses to obey a part of it may be an honest man. To these and such as these, whether dupes or deceivers, we do not address what we have to say, knowing that the wickedness of the one class cannot be reclaimed, nor the folly of the other enlightened by any thing we can offer. But we address those upright and patriotic men who see in the Constitution of their country nothing inconsistent with the law of God, and who stand ready, as christian men and good citizens, to render obedience to the Constitution and the law, and to every part of each; and we ask from them an impartial consideration of what we have to submit.

In order that the precise objection to which we refer may be accurately understood, we insert a resolution adopted at a convention held in Rochester:

"*Resolved*, That we consider the Fugitive Slave law, recently passed by Congress, *unconstitutional*, in that it abrogates the rights of 'habeas corpus' and trial by jury, and prescribes a form of procedure against fugitive slaves which overturns the most essential principles of common and constitutional law."

The objection here stated is, that the Fugitive Slave law is "*unconstitutional*" because it "abrogates" "the right of trial by jury, and prescribes a form of procedure" "which overturns the most essential principles of common and constitutional law."

Now no law can "abrogate" a right which does not exist; and to support this objection the first thing necessary to be shown is, that in this case of fugitive slaves, or in cases analogous to it, a *right* to trial by jury exists under the Constitution—but this cannot be shown.

The Constitution of the United States secures the right of trial by jury in two cases, and in two only. By the 3d clause of section 2 of the third article, and the 6th amendment, "the trial of all crimes, except in cases of impeachment, shall be by jury," and "the accused shall enjoy the right of a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed;" and by the 7th amendment, "in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."

It is plain that the surrender of a fugitive slave belongs not to either of these classes. The procedure is not a suit at common law, nor a prosecution for a crime against the United States, and no ingenuity can devise even a plausible argument to show that such procedure is either the one or the other. It is manifest, then, beyond doubt or reasonable denial, that the Constitution of the United States

gives no right of trial by jury to one claimed as a fugitive slave; and, therefore, the law in question does not deny or withhold any right secured by the Constitution, and hence is not unconstitutional. If by "Constitution," in the resolution we have quoted, be meant a State constitution, then the resolution is absurd. The act of Congress does not rest for its support upon any State constitution, but, on the contrary, if not inconsistent with the Constitution of the United States, is, by the express provision of that Constitution, "the supreme law of the land," "any thing in the constitution or laws of any State to the contrary notwithstanding."

The right of trial by jury then not being by the Constitution directly secured to persons claimed as fugitive slaves, is it secured in any like or analogous cases? Two cases analogous to this exist; one of fugitives from justice escaping from one State into another—expressly provided for in the Constitution—and the other of such fugitives from foreign countries—arising under treaties made by foreign powers with the United States. In neither of these cases has any trial by jury—either as to the offence or the identity of the offender—ever been secured or claimed. In each case, upon affidavits sworn or indictment found in the country or State in which the offence is alleged to have been committed, and proper proof of identity, to be submitted to and considered by a judge, commissioner, or other magistrate without the aid of a jury, the fugitive is sent into the State or country from which he escaped, to be *there* tried—with or without a jury—publicly or secretly—fairly or not fairly—with or without counsel—in the presence or absence of his accusers, upon written or oral testimony—upon evidence direct or circumstantial, on knowledge or hearsay, on presumptions light or strong, and with or without the right of being heard and of producing witnesses in his defence, as the law of that State or country may prescribe.

These cases bear a close analogy to the case of the fugitive slave, so far as the United States have jurisdiction over them. That jurisdiction extends only to the removal upon reasonable evidence—presumptive or *primâ facie*—of the respective fugitives to the State or country from which they may have fled, to be there disposed of according to its laws. This removal is accomplished, in the one case, by placing the fugitive slave in the custody of the owner; and the fugitive from justice, in the other, in the custody of the agent of the State or country claiming him, with authority to remove him to the place whence he escaped.

If it be denied that the cases are analogous, then it must be admitted that under our system there is no case analogous to that of the fugitive slave; and then, it having been shown that under the Constitution the right of trial by jury is not given to such fugitive as such, and there being no analogous case from which such right might by inference be deduced, it follows most clearly that the law in question withholds no constitutional right by withholding the trial by jury.

But the cases are analogous, and under the Constitution to be disposed of in the same way, by a summary proceeding and upon *primâ facie* proof. This we will show by the highest authority for learning and intelligence, and which cannot be suspected of any bias towards the Southern side of the question. That authority is the late eminent Mr. Justice STORY.

In Book 3, chap. 40, of his Commentaries on the Constitution of the United States, he considers together the subject of fugitive offenders and fugitive slaves. After quoting the clause respecting fugitives from *service*, he says:

"This clause was introduced into the Constitution *solely* for the benefit of the slaveholding States, to enable them to reclaim their *fugitive slaves* who should have escaped into other States where slavery was not tolerated. The want of such a provision under the Confederation was felt as a grievous inconvenience by the slaveholding States, since in many States no aid whatsoever would be allowed to the owners, and sometimes, indeed, they met with open resistance."

And in the next section he thus expresses himself:

"*It is obvious* that these provisions for the arrest and removal of fugitives of *both classes* contemplate *summary* ministerial proceedings, and not the *ordinary course* of judicial investigations, to ascertain whether the complaint be *well founded*, or the *claim of ownership* be established *beyond all legal controversy*. In cases of suspected crimes, the guilt or innocence of the party is to be made out at his trial, and not upon the preliminary inquiry whether he shall be delivered up. All that would seem in such cases to be necessary is, that there should be *primâ facie* evidence before the executive authority to satisfy its judgment that there is probable cause to believe the party guilty, such as upon an ordinary warrant would justify his commitment for trial. And in the cases of fugitive slaves there would seem to be the *same necessity of requiring* ONLY *primâ facie* proofs of ownership, without putting the party to a *formal assertion of his rights by a suit at the common law*. Congress appear to have acted upon this opinion; and, accordingly, in the statute upon this subject, have authorized summary proceedings before a magistrate, upon which he may grant a warrant for a removal."

Now, if Judge STORY understood the Constitution, and if, understanding it, he might be safely trusted to declare its true interpretation, it follows that the Constitution contemplated, as to *both* classes of fugitives, "summary" proceedings, and *not* "ordinary judicial investigations;" that *primâ facie* evidence of ownership in one case, and *probable cause* to believe the existence of guilt in the other, *only* ought to be required; and that the owner ought not to be

put to "a formal assertion of his rights by a suit at common law." And this clear opinion of Judge STORY answers and refutes another point of objection in the resolution we have quoted: that the law overturns "the most essential principles of *common* law," for that opinion shows that neither the Constitution nor the act of Congress of 1793 contemplated any suit at common law; and so the principles of the common law have nothing to do with the matter. Indeed, the framers of the resolution seem to have understood as little of the common law as they manifestly did of the Constitution. When and where did the common law ever empannel a jury to determine whether a fugitive should be committed for trial—whether a person arrested in one jurisdiction should be sent back to that from which he escaped, or in any such case? When and where did the common law empannel a jury except to make a final decision of a question of fact upon which parties were at issue, "upon a formal assertion of rights," and where the claim "was to be established beyond all legal controversy?" When or where, according to the common law, was the verdict of a jury taken, in order that the question found might be thereupon remitted to some other court or country, to be again tried and determined? When or where does the common law require a jury to be empannelled between parties, and to decide upon proofs made by them, without at the same time giving final and conclusive effect to the decision? If the common law has at any time or place done any of these things, let it be shown. If not, let there be no more idle prating about a violation of its principles.

Upon the whole, we submit to any man of sense, if we have not shown the whole resolution to be absurdly false in its assertions. We need not show, what is apparent upon its face, that it is and was designed to be a *mischievous* absurdity. We warn every lover of truth and fair-dealing against a cause which seeks and requires for its support such confident assertions of known falsehood, and every lover of the Constitution to distrust such seditious appeals against the law of the land, and to mark those who make them as men either without sound sense, or without just principles—as either wickedly perverse, or the dupes of a hopeless and mischievous fanaticism.

The Fugitive Slave Law—Once more.

We conceive it to have been established, beyond even plausible cavil, that the Fugitive Slave law does not suspend the privilege of the writ of *habeas corpus*, and that the case of a fugitive slave is not one to which the Constitution extends, either directly or by inference, the right of trial by jury: and hence that no constitutional objection can be justly alleged against that law.

It remains, then, to inquire why, if the law be thus plainly constitutional, has its passage provoked such violent denunciation and given voice to such clamorous demands amongst our northern population for modification, for repeal, for resistance?

Is the tribunal established by the law inadequate or unfair—likely, by reason of ignorance or prejudice, to lend too favorable an ear to the claimants of blacks as fugitive slaves?

This cannot be alleged with truth. The magistrates authorized by the law to act are judges of the United States and commissioners appointed by them—all living in the free States, owning no slaves, holding the institution in no favor, having no sympathy with the claimant, and, consequently, if under any bias, inclined by every thing in their social position and habits to lean towards the side of the fugitive. To suppose that these men would go beyond their duty and the law in order to convert free blacks into slaves, is to suppose them capable of crime for its own sake—willing, in order to do wrong, to incur the reprobation of all good men, and become the scorn of the very society in which they live, without reward or the hope of reward for their baseness. It is not merely to deny them the dispositions of good men, but to give to their wickedness a character of atrocious and wanton love of evil, proper only to a fiend. No man can suppose this of them who is not conscious in himself of a revolting regardlessness of truth, justice, and humanity; and, therefore, it will not be alleged by any who have pretensions to common sense and common honesty.

The uprightness of the tribunal being, then, certain, is its intelligence subject to reasonable suspicion? Of the judges this will not and cannot be asserted. Of the commissioners appointed by judges admitted to be wise as well as honest, why should it be supposed that they will be deficient in the qualities of those who appoint them? The judges making the appointment have the best means to learn the true characters of the men whom they select, and are under the highest obligations to select those only whose intelligence and probity will fit them for the station. Can we doubt the result of a choice made by such judges, with such motives to choose well and wisely, and such means of guiding their choice aright?

But this is not the only case in which by law similar powers have been vested in commissioners appointed by the same judges. By treaties with certain foreign nations, the United States have engaged to surrender fugitives from justice escaping into this country. By these treaties such evidence only is to be required for the surrender of the offender as would here justify a commitment for trial—that is, probable cause—suspicion less than *prima facie* proof. And by the act of Congress to give effect to these treaties, judges of the United States, or commissioners appointed by

them, are competent to act, and are to act upon copies of affidavits sworn in a foreign country, and charging the party with the offence—the identity of the person being the only matter to which witnesses are to be examined here. Now, here we have the same class of officers upon a summary examination on proofs taken in England or France, without cross examination of the witnesses, causing a free white man or woman to be sent beyond the United States for trial in a distant and a foreign land. This has been in fact often done; yet no complaints have been heard of the incompetency of the tribunal, no town meetings held to denounce the law and clamor for its repeal. What is the difference between the two classes of cases? There is no more difficulty involved in the inquiry in the one than in the other. He who is competent to determine as to the existence of probable cause—reasonable ground—to suspect one fugitive of a crime, can scarce be found incompetent to decide upon the *prima facie* proof that another fugitive owes service or labor to a master from whom he has escaped. If no objection can be supposed in one case more than the other for want of capacity, neither can any want of fairness be imputed in the one more than in the other. The competency and fairness being in both cases admitted or proved, why should the execution of the law in one case be violently opposed, and in the other pass without complaint or censure? To account for this difference, has a single instance been known, under the act of 1793, of the surrender by a magistrate of a freeman as a fugitive slave? Has such an instance been understood to exist? We confidently answer—No. Why, then, should such things be looked for under the present law? or are they *in fact* looked for? In the recent cases at Detroit and Pittsburg, which created such excitements, and called together such motley assemblages of riotous protesters against the law, there was not a suggestion that the persons arrested were not fugitive slaves; on the contrary, that fact was admitted, and that fact produced the excitement. Had the persons arrested been freemen, there would have been no excitement—no tumultuous assemblage—no threats—because the legal tribunal would, in a peaceable and orderly manner, have discharged the parties. Was there suspicion of unfair bias on the part of the tribunal? Quite the contrary: it was known that the fugitives were slaves—that the Commissioner would do his duty—and that, doing his duty, he must surrender the fugitives to their owners. This was known, and this produced the excitement. It was the conviction that the tribunal was both competent and impartial, and that conviction *alone* which agitated the public mind, and set the negroes and the abolitionists in an uproar.

This being evident even to demonstration—why is an outcry raised at the surrender of a black man, and none raised at the surrender of a white man—the surrender in each case being made by a single magistrate, upon *primâ facie* or barely probable proof, and without the intervention of a jury? Are black men better than white? Are they beings of a superior grade, with more refined sensibilities or higher claims upon our fraternal feelings and kindly sympathies? Is a tribunal good enough for a white man from Ireland, or England, or Scotland, or France, and yet not good enough for a runaway negro from Georgia, or Virginia, or Kentucky? Shall a free white emigrant from Europe be seized in New York or Boston upon an affidavit sworn in a foreign land, be separated from his family, torn from his adopted country, and forcibly removed beyond seas for trial, because he is *suspected* of an offence—and this under a voluntary engagement entered into by the President and Senate with a foreign country? Shall this be done without complaint—and yet heaven and earth be moved to prevent the surrender of a black man to the master from whom he has fled, when this surrender is enjoined by an express provision of the Constitution of our country, and cannot be refused without a violation of the highest duty of a citizen, and the solemn oath of every public officer? Are the negroes better than the Irish, the Scotch, the French, or the English? Is wrong, if there be wrong, only to be resisted when it touches a negro? or does that which is right, and just, and fair, when applied to a free white man, become wrong, unfair, and wicked when applied to a runaway slave?

Away, we say, with this one-sided and partial sympathy, this disingenuous and special-pleading humanity. If trial by jury be necessary or expedient in one case, it is so in the other. Let it then be demanded in both; or else let there be no more of hypocritical outcry by political Abolitionists because that is not extended to black slaves which they themselves admit may be rightfully withheld from free white men.

Let no man be deceived as to the purpose and motives of these agitators. It is not fear of injustice to free black men of the North; it is not solicitude for impartial trials and just decisions, which raises the shout for juries and for writs of *habeas corpus*. It is *justice* which is *feared;* it is an impartial trial, offered and secured by this law, which prompts the denunciation and stimulates the threat of resistance. Is additional proof wanted of this? It is at hand. In all the indignation meetings held upon the passage of the law, who is incited to resistance; who recommended to take arms; who assured of assistance and sympathy? It is the fugitive slave—not the free black; it is the known runaway from a Southern master—not the colored citizen of a Northern State. Who has taken flight upon the passage of the law, and sought refuge in Canada beyond its authority? Not the colored free man,

but the runaway slave. He has fled not because of his color, but because of his social condition; and it is undeniable that of the whole free black population of the North no one has absconded, because no one has felt insecure. To none of them have been offered assurances of protection and assistance, or exhortations to arm for his defence, for none of them was supposed to be in danger.

Thus then stands the case: The law of 1850 for the restoration of fugitive slaves is in all respects consistent with the Constitution; it provides a fair and impartial tribunal, such as is afforded in analogous cases to white men, whether foreigners by birth, or native citizens of the United States—a tribunal liable to no suspicion of wrong, and not in fact suspected of any; and this law is passed in obedience to a positive provision of the Constitution, binding upon the consciences not only of members of Congress and national and State officers, but of every citizen of the republic. It is impossible, therefore, to resist the conclusion, that the whole opposition to this law grows out of the conviction that in its execution the duty of Congress will be fulfilled—the constitutional injunction be complied with—and runaway slaves be surrendered to their masters. The trial by jury is demanded, not to protect freemen, but to harbor slaves—is sought, not as a fair means of executing the law, but as a safe and specious, a legal and orderly mode of defeating the law. The demand for it is, a tub to the whale, a watchword for a party, a rallying shout for sedition, the battle-cry with which tumultuary violence may rush to conflict against the law and the magistracy of the country. The whole opposition is to the CONSTITUTION, and the law is denounced because, and *only* because, it carries out the Constitution. The opposition is, therefore, seditious and treasonable in its character and tendency, and needs only to show itself with armed bands and hostile array, in resistance to the execution of the law, to involve all its adherents in the formal guilt of treason against the United States.

We repeat, therefore, our warning to all good citizens; to all law-abiding men; to all who are free from seditious and treasonable designs, to beware of these opposers of the Constitution and the law—these disturbers of the peace and order of society.

A singular and appalling spectacle is now presented by our country. At the South, disunion is *openly* taught and urged by some, and secretly supported and desired by others. There the admission of the free State of California into the Union by an unquestionable act of constitutional power; there the abolition of the slave trade in this District, a measure of police and domestic regulation clearly within the just authority of Congress—are made the grounds of incipient measures for a dissolution of the Union. At the North a rupture of our constitutional Union, though not so boldly avowed, is yet as truly sought, because of the passage of a law for restoring slaves to their masters according to a positive command of the Constitution. Thus men of opinions extreme in opposite directions—men who agree in nothing else—seem engaged, for reasons the most contradictory, in a common effort to unsettle the Government, to set at defiance its authority, and either directly overthrow or covertly undermine that fabric of national Union which our wiser fathers, with so much toil and care, built up for themselves and their posterity. From considering this strange spectacle, let the great mass of patriotic and Union-loving men, both North and South, learn the true lesson of duty and of safety—"*In medio tutissimus ibis.*" Let them discard, disown, discountenance both these dangerous and fanatical extremes, and stand firmly upon the middle ground of the Constitution, where only they can stand securely.

But we would particularly urge this counsel upon our Northern brethren; by them it is specially needed; for at the South the surface of agitation is narrowing, and its violence has abated, while at the North sedition seems to have gathered both strength and boldness, and now shows itself in the light of day, and assumes to speak with a voice of authority and defiance. We entreat, then, our Northern fellow-citizens not to mistake the condition of things, but to look at our affairs with the careful scrutiny, and treat them with the wise precaution, which the emergency requires.

THE FUGITIVE SLAVE LAW MUST BE EXECUTED, OR THE UNION CANNOT BE PRESERVED. A cry has been raised for its repeal. THE REPEAL OF THAT LAW WILL BE THE REPEAL OF THE CONSTITUTION. Let them not be deceived. The Southern mind has been deeply impressed with a sense of wrong—of injustice—of indignity offered by the North. We do not now inquire whether there is good reason for this or not. The fact is as we state, and with the fact only have we now to do.

The right to the surrender of fugitive slaves is clear—guarantied by the Constitution, and, without this guaranty the Constitution would never have been ratified by the Southern States. Here is no matter for ingenious disquisitions—no ground for difference of opinion—no loop on which to hang a doubt. The right, by the words of the Constitution, and according to constant judicial interpretation, is as clear as the right of any Southern State to have two representatives in the Senate; and that the United States are bound to secure and enforce this right is, by the solemn judgment of the Supreme Court, as clear as is the right itself. To repeal this law then—nay more, to make any material alterations of its enactments—would be to repudiate this provision of the Constitution; and, in effect, to abrogate the right which it secures. To leave the

law on the statute book, and to suffer its execution to be prevented by unlawful combinations or mob violence, or by criminal neglect of the duty to enforce it, would be to accomplish the same object by other and more discreditable means. The effect of this upon the Southern mind and the Southern heart, is not difficult to be forcknown. It would be seen and felt as a plain, direct, and dishonest breach of a solemn duty—a wilful violation of a fundamental condition of our Union, and an undisguised effort to hold the South to so much of the Constitution as might benefit the North, while whatever is indispensable or useful to the South should, at the pleasure of the North, be disregarded and silently annulled. Does any man suppose that our Southern brethren *would* submit to such a state of things? will any man venture to say that they *ought?* Assuredly they would not, as assuredly they ought not. No, in such an event, the very spirit of Union, the desire for Union, would be gone. Not only would the irritable and fiery spirits of the South blaze forth in fierce resentment, but her sober-minded and temperate sons would be roused to a stern and determined resistance. Whatever has been or may be compromised, this could never be. This is the Rubicon; to pass it, is to overthrow the Constitution.

Let then the great body of our Northern people, true as we know them to be to every obligation when distinctly stated and plainly perceived—let them understand the all-important issue now in their hands. If they wish—which we should shudder to believe-or even suspect—to dissolve the Union, we have nothing to say. If they do not, it is high time they had opened their eyes to the danger, and awakened to the necessity of active measures for averting it. Let their voice be heard to silence and overawe the promoters of sedition—let their hands be prompt to aid the civil magistrates in executing the law against all combinations of force to resist it. Let them do this, and the Union is safe—let them neglect it, and they are *certainly* guilty, and all of us are *probably* undone. This is a time when good men should be known by their words and by their works. While sedition is speaking trumpet-tongued in the places of public concourse; while armed resistance to the law is openly urged, in town and country, upon the unwary and the ignorant, and tumults and violence encouraged by promises of protection and support—it is no time for men of a better mind to let their opinions and their principles be unknown. To avoid being confounded with bad men, and becoming responsible for bad measures, these should openly separate from them; and, to give strength and efficacy to their efforts for their country, should unite with one another—for there is an evil spirit abroad in the land, active, deceitful and strong, and, for its exposure and destruction, prompt and united exertions are demanded.

The time has come—would that the good and the patriotic of all parties felt it to be so, for then were our country safe—yes, the time has fully come, in the language of the immortal BURKE, "for the UNION and the SEPARATION of 'the people; for the *union* of the *honest* and 'peaceable of *all* sects; for *their separation* 'from all that is *ill-intentioned* and *seditious* in 'any of them."

The Fugitive Slave Law—The Morality of resisting it.

There is one other matter connected with this law and the agitation consequent upon its passage, to which, perhaps, attention ought to be given, and we shall therefore offer some remarks upon it. The agitators allege that, in their view, the law is immoral, and therefore it not only may, but should, be resisted. That the reader may be certain that we neither mistake nor misrepresent their position, we give the formal declaration of their sentiments in two resolutions of the Rochester convention:

"*Resolved*, That we consider this law *immoral*, in 'that it forbids the exercise of hospitality to the in-'nocent wayfarer, and requires *men* to become '*hounds* upon the track of the wronged and hunted 'fugitive. Therefore,

"*Resolved*, That we consider this law not bind-'ing and void, and hold ourselves bound not only 'not to obey, but positively to *disobey* it."

Now these resolutions assume that a runaway slave is an "innocent wayfarer," to whom "the exercise of hospitality" is due, and, when pursued by the Marshal, by virtue of a warrant for his arrest, is a "wronged" as well as a "hunted" fugitive; and conclude that the law which recognises his apprehension, and forbids his being secreted and harbored, is therefore "immoral," and being immoral is "void," and ought to be "*positively* disobeyed."

But the Constitution and the law do not regard a runaway slave as an *innocent* wayfarer, as a wronged fugitive. Not so did the framers of the Constitution, the makers of the act of 1793—the judges of the State and Federal courts—regard him. On the contrary, by these, he is regarded as one who "owes service and labor" to another, from whose just authority he has escaped, and who ought to return to him to whom "the service or labor is due." Now he who refuses to discharge the "service and labor" which he "owes"—who, in order to avoid their performance, runs away from the person to whom they are "due"—is not an *innocent* wayfarer, but is a wrong-doer, and when pursued by him from whose just dominion he has escaped, is not a "wronged and hunted fugitive," but is a fugitive whose recapture is right because his flight was wrongful. It is plain, then, that this entire subject is consid-

ered by the fundamental law, by the municipal law, by the whole public authority of the nation, in one light, and by the Rochester meeting in another and a very different light. And since there is something specious in the form of the resolutions—something delusive and captivating in the arrangement of the phrases "wronged and hunted," "innocent way-farer," and "exercise of hospitality," calculated to rouse, in those who are guided by impulse rather than reason, a feeling of resentment against a law denounced as "immoral"—we propose to disentangle and refute the sophistry of the resolutions, and to show that the doctrine of the Rochester meeting, legitimately carried out, would render all property insecure, and effectually deprive of all authority the public will of society embodied and declared in its fundamental law.

The true scope and bearing of the doctrine in question will be best understood by throwing it into the syllogistic form. Thus stated, it will give us the following logical formulas:

1. All laws which *we consider* immoral, we have a right to resist.

But we consider the fugitive slave law immoral; therefore, we have a right to resist it.

2. Laws which we have a *right* to resist because they are immoral, we are *bound* to resist.

But we have a right to resist the Fugitive Slave law on that ground.

Therefore we are bound to resist it.

3. We have a right to exercise hospitality to an innocent wayfarer.

But he is an innocent wayfarer whom *we consider* such.

Therefore, we have a right to exercise hospitality to whomsoever *we consider* an innocent wayfarer.

4. Laws which forbid the exercise of hospitality to those whom *we consider* innocent wayfarers are immoral and void.

But we consider fugitive slaves to be such wayfarers.

Therefore, the law which forbids the exercise of hospitality to such fugitives is immoral and void.

Now, it is most evident that all this—reasoning shall we call it?—rests upon the assumption that whether laws are binding or void—may be rightfully resisted or not—depends upon the opinion of him who resists or obeys. But if the right or duty to resist depends upon the opinion of the individual that a law is void—and whether it is void depends on his opinion that it is immoral—it follows that none can *rightfully* resist but those only who entertain the opinion that the law is immoral. Hence a law, on its face providing a rule of conduct for all, may be rightfully binding upon one person or class and not upon another; and one person or class, in resisting it, will discharge a high duty, and be entitled to applause and reward, while another, by resistance to the same law, will commit a crime, and be *justly* subject to punishment.

We presume the Rochester meeting claims no *exclusive* right to judge of the immorality of laws, or to determine for all the world what classes of persons deemed by the law to be proper subjects of arrest, or confinement, or punishment, are nevertheless wronged and hunted fugitives, and therefore entitled to hospitality as innocent wayfarers. We presume that meeting claims no monopoly of resistance to the laws, but leaves a common freedom, as well in the theory as the practice of sedition, to all our people.

Let us, then, see how their doctrine will work in the hands of others, and applied to other subjects than the Fugitive Slave law.

The laws of every State and Territory in the Union (unless the Mormon settlement of Utah be an exception) prohibit a plurality of wives—and generally treat the offence as a felony, visiting it with ignominious punishment and social degradation. But every Mahomedan devoutly believes that, by a revelation from Heaven, every man is allowed to have four *wives* at a time, and as many *women* as he can buy and maintain. Now, suppose a person charged with the felony of taking a second wife during the life of a first, should escape into the State of California—should be there arrested under the authority of the act of 1793 as a fugitive from justice, and be delivered to the agent of the State from which he fled; suppose he should be rescued by an honest, kind-hearted, and sympathizing Mahomedan emigrant who had left behind him his four wives, and come to dig gold in the placers of California—should be taken to his house, be there secreted, fed, and treated with every hospitable care: would this dispenser of hospitality be justified by the Rochester resolutions? Most certainly he would, whether the persons composing the meeting would justify him or not. According to his creed—in which his faith is a blind and unquestioning confidence—God, by special revelation, has made it lawful and right for every man at his pleasure to take as many as four wives. It is clear that a law forbidding what God has made lawful and right, is immoral—and, if immoral, then, by the Rochester resolutions, void. Hence he had a right to exercise his hospitality to the poor bigamist who, to his view, appeared "a wronged and innocent wayfarer," hunted by the bloodhounds of power, and most unjustly threatened with degradation and punishment for a very abstemious use of a privilege divinely conferred—for taking two wives, when he might rightfully, and without any moral offence, have doubled the number. No fugitive slave could appear to the sympathies of the Rochester meeting half so much an innocent, oppressed, and persecuted wayfarer, as, in the case supposed, would the fugitive from Anglo-Saxon justice appear to the tender-hearted and pity

ing follower of Islam. And if, in following out by resistance his honest and sincere convictions that the law was unjust and immoral, he would be criminal, then are the Rochester resolutions false and vicious in principle.

Again, there are persons in the United States who believe that all wars are immoral, because, as they think, forbidden by the divine law; there are those who deny that the punishment of death can, consistently with the same law, be inflicted for any crime. Now are persons entertaining such opinions warranted in rescuing, harboring, or secreting one condemned to death by the civil power for burglary, on the ground that the law under which the judgment was given is considered by them against the divine law, and therefore immoral and void; or in rendering the same service to a soldier sentenced to death by a military court for disobedience of an order to fire upon the enemy, on the ground that what was imputed to him as a crime, was but obedience to God, entitling him to praise and commendation; and, therefore, he was, in their view, a wronged and hunted wayfarer, not only innocent but meritorious, to whom this exercise of their hospitality was eminently due?

Again: there are those who deem all property an unwarrantable violation of natural right—the whole earth, and every part of it, being designed by God for the common and equal benefit of all mankind. These, therefore, condemn all setting apart of distinct portions of the earth or its productions for the separate use and to be under the sole dominion of particular persons, as inconsistent with the divine law, and unjust encroachments upon the general interest of themselves and others. They look with horror upon the *immoral exclusiveness of property*, and consider the law which supports this immorality as oppressive, tyrannical, immoral, and of course, by the Rochester resolutions, void; and hence there is on them not only no obligation to obey, but a positive duty to resist it. Then these persons, in rescuing, harboring, and concealing shoplifters, burglars, and highwaymen, are, by a clear application of the Rochester doctrine, engaged in the discharge of a high duty, namely, that of exercising hospitality to the innocent wayfarer, and succoring the wronged and hunted fugitive. But further—for we have not reached the full measure of mischief and confusion to which this doctrine manifestly tends—if the persons who succor, harbor, secrete, or rescue the offenders in the cases above instanced, are acting rightly, because, *in their opinion*, this law in these instances is immoral, will it not follow that the offenders themselves—offenders, that is, in the judgment of this immoral law—are *in truth* worthy and excellent persons, entitled to pity and help, instead of being justly liable to punishment? And if the opinion of the party, and not the law, is to be the test of guilt or innocence—if the law be immoral, and void to him that thinks it so, then judges and juries are bound to pronounce him innocent who only disobeys a law which he sincerely considers immoral, because the law being void as to him, by reason of its being, in his opinion, immoral, it is not only his right, but his duty to disobey it, and no one can, without absurdity, be deemed guilty of a crime for merely discharging his duty.

Once more—as the duty of resistance is, by the Rochester meeting, made to rest solely upon the opinion that the law is immoral, it follows that those who do not deem it immoral are not only not bound to resist, but are bound to support the law. And, therefore, of two armed bands, one engaged in supporting the magistrate in executing the law, and the other in resisting the execution of it, both may be right—both engaged in the meritorious discharge, not of an imaginary, but of a *true* and *real* duty—and each party justifiable for the homicides committed on the other. And so our cities may be made the scene, by night and by day, of bloody encounters between hostile parties, and yet nobody be to blame; but on the contrary, all stand entitled to praise and honor for a faithful and fearless discharge of duty.

But we will not pursue this train of thought into further particular illustrations. Sufficient has been said to convince good citizens and upright men—and to these only do we submit our views—that the assumption on which the Rochester resolutions are founded is utterly inconsistent with the fundamental principles on which all government rests, and is therefore politically vicious, and that it is at the same time practically irreconcilable with the maintenance of virtue and happiness in any community, and is therefore in the highest degree immoral and dangerous.

It is true that every man has a right to form his own opinions in regard to human legislation in particular, as well as in regard to human conduct in general. He is not morally bound to volunteer his assistance to what he sincerely considers as harsh, unjust, or oppressive; but when the law, which is the embodied will and judgment of the society to which he belongs, imposes a duty or gives a right—then is he bound, morally bound, to submit to the law, and of course forbidden to resist it. If the meaning or validity of the law be doubtful, he must submit the question of power or construction to the judgment of that tribunal which, by the fundamental law, is entrusted to decide, and by their decision he is bound—politically and morally, as a man and a citizen—to abide. In no other way, by no other principle of conduct, can government be maintained or society held together. As men, we daily differ amongst ourselves as to

expediency, justice, morality, in their application to rights and conduct, and these differences influence our views of what should be the legislation of the country. But there must in every society be a rule, *one rule*, as to the rights and conduct of men considered as members of that society. What then remains but that we, as citizens, submit to the common judgment expressed in the laws ordained by the competent authority? Submit, not by surrendering the internal convictions of our minds—that can only be justly required or properly yielded to reason and fair argument—but by outward conformity to the law. This is what is demanded, and this only; for law is a rule of *conduct*, not a symbol of *faith;* it regulates, not the *opinions*, but the *actions* of men.

It is true that a people have a right, in extreme cases of obstinate oppression, to resist the rulers and the laws; but this is revolution, this seeks to overturn an existing government as utterly faithless to its trust, and to correct the evil by depositing the public authority in other hands, with better safeguards against abuse. This case has no just connection with the subject now under consideration, and may be dismissed without further remark. It is also true, that it may be the duty of an individual, on christian principles, to refuse obedience to a particular law. We must "obey God rather than men," and therefore, if the law requires us to do something against the plain, express, revealed command of God forbidding us to do it, we not only may, but should, refuse to obey. Thus the early Christians, being required to offer idolatrous worship to the statues of the Emperor, refused to obey. Again, the Apostles having received an express command from their Saviour to preach in his name, continued to preach, notwithstanding an arbitrary order of the Sanhedrin against it. This was in one case a mere offering of passive resistance—a mere declining themselves to obey; and little more in the other. No active resistance was in either case thought of—no commotions were stirred up—no forcible opposition resorted to or recommended—no attempt made to defame or decry the governing power, or to bring it into contempt or hatred with the people. In one case there was a simple and respectful refusal to do what God had expressly forbidden, and, in the other, to forbear doing what he had expressly commanded; and the persons refusing suffered stripes or went to the stake, not only without resisting, but even rejoicing that they were counted worthy to suffer in such a cause. And only in these and such like cases—of plain manifest certainty that God's law is against the human law—can active obedience be refused according to the theory of Christianity or the practice of the early Christians. In all others, active obedience is a duty—and not even in these will Christian morality justify active resistance. All that a christian can rightfully do is to refuse obedience, and suffer for his refusal; but mobs—violence—arms—combinations to overpower the public authorities,—these, and all like these, are modes and means of opposition, ever forbidden to the Christian, and ever immoral in their nature by the law of the Gospel. For what say the Scriptures? "*Submit* to every ordinance of man for the Lord's sake"—"He that *resisteth* the power resisteth the *ordinance of God*"—"Ye must needs be *subject* not only for *wrath*, but also for *conscience* sake." Therefore, to *submit* is the Christian's duty; and when he *resists* he violates his conscience, and puts himself in opposition to God.

In accordance with this view was the whole conduct of the apostles and primitive Christians. In respect particularly to this very subject of slavery, what was the apostolic course? It was, to urge upon slaves active, cheerful obedience, faithful and diligent service, to their masters; and these "not only to the good, but also to the froward," without an intimation that they ought or might, under any circumstances, refuse submission to, or escape from the lawful dominion of their masters, and, in one remarkable instance, to counsel, if not to command, the return of a fugitive slave to his master.

This conduct of the Apostles is conclusive against the Rochester meeting and the doctrines put forth by it, of the right and duty positively to disobey the Fugitive Slave law. For, either the Apostles thought the institution of slavery in itself morally right, and, if so, the whole doctrine of the Rochester meeting is at once refuted; or they thought it not morally right, and, if so, then it follows that it is lawful and right for a Christian to perform himself, and to support and enforce upon others the performance of, the duties growing out of an existing institution of society, though in itself not morally right, and to advise and counsel an escaped slave, as a christian duty, to return and submit himself to his master; and, therefore, a Christian is not bound by christian duty to disobey a law for restoring fugitive slaves to their masters. And if not bound to disobey, it follows that he is bound to obey, since the only ground on which the right to disobey is placed is the alleged immorality of the law in supporting the institution of slavery; and that being disproved byapostolic precept and example, the duty of obedience remains.

Upon the whole, we think it appears with sufficient clearness, from what we have said, that if there be any thing in the laws so offensive to our moral sense that we can neither obey nor submit to them without consciousness of guilt, we ought to remove to some country where the annoyance will not meet us; but that while we remain members of a society, and enjoy its protection for our persons and property, we cannot, without criminal

inconsistency, refuse to obey its laws, much less dishonor and insult the public authority by active and ostentatious disobedience. Such conduct would be not less a violation of the law of God than of the laws of the country; and, therefore, the Rochester convention, which commended this conduct, and resolved to pursue it, are not the very fittest persons in the world to lecture others on the rules of morality.

They who make or counsel opposition to the laws of their country may with sufficient certainty, and, therefore, not uncharitably, be set down as bad men; for if it be asked, who is a good man? the answer, considering men as citizens, must ever be, at least in such a country as ours, "*Qui consulta patrum, qui leges juraque servat.*"

It is indeed true, here and everywhere, that "he that contradicts acknowledged truth will always have an audience; he that vilifies established authority will always find abetters;" but under such a government as ours it is no less true that he who sets up a claim to consideration by denouncing the constituted authorities of his country, and founds his character for morality upon a declared purpose to resist the execution of the laws—however he may deceive ignorance and awaken in his favor the sympathizing shouts of the seditious—will not fail to meet a stern rebuke and resolute condemnation from the great body of the nation. These are lovers of constitutional liberty and orderly judicial administrations; these are too intelligent to be long misled by sophistry, and too virtuous to embrace the cause of violence and insubordination. On this truth firmly reposes our confidence in the stability of our institutions, and in the faithful execution, against all opposers, of every constitutional law.

The Fugitive Slave Law, and its Constitutionality, yet once more.

We once more call the attention of our readers to the Fugitive Slave law in order to refute another—and, to persons not conversant with legal investigation, somewhat specious—objection to the constitutionality of that law.

It is brought forward by no less a person than Mr. SAMUEL E. JOHNSON, styling himself "county judge of King's county," as a reason for refusing the appointment of commissioner, tendered to him by the circuit court of the United States for the southern district of New York, and is a pretty fair specimen of that small criticism which small lawyers sometimes make on large subjects—a criticism not remarkable either for modesty, clearness, or judicial acumen.

Here it is in the letter of the "county judge" to the clerk of the court:

"The reason which impels me to decline it is, *a serious doubt of the constitutionality of such an appointment.*

"The Constitution of the United States says that 'the judicial power of the United States shall be 'vested in one Supreme Court, and in such inferior 'courts as *the Congress* may from time to time or-'dain and establish.' The power conferred upon 'me by virtue of this order of the circuit court is, 'in one case at least, clearly judicial: in the words 'of the act, commonly known as the Fugitive Slave 'law, '*to hear and determine* the case of such claim-'ant on satisfactory proof being made of identity,' '&c. But as Congress has not conferred this power 'upon me directly, and has not ordained or estab-'lished me as an inferior court, and as it has no au-'thority to delegate such power of appointment, I 'am forced to question the authority under which 'I should be called upon to act, were I to enter upon 'the discharge of the duties of the office."

The several particulars here stated are mixed up together with so much confusion that we are not certain that we precisely understand, or that the writer himself precisely understood his objection. His notion seems, so far as we can make it out, to be, that the functions of a commissioner are *judicial*, inasmuch as he is "to hear and determine," and, therefore, can only be conferred upon a court; that Congress has not, in this case, established or ordained Mr. SAMUEL E. JOHNSON as a court, or conferred power "directly" (that is, by name or description) on Mr. SAMUEL E. JOHNSON, that that body cannot delegate its power in the premises; therefore the law is, in this respect, unconstitutional.

Now, we propose to refute the position assumed by the "county judge," by several modes of treating it.

First: The law is said to confer judicial powers, because the commissioner is authorized "to hear and determine" upon the proofs submitted to him; but the power to hear and determine is not less conferred by the act of 1793; for by that act the judges or magistrates authorized to take cognizance of cases of fugitives from labor are directed, "upon proof to" their "satisfaction, either by oral testimony or affidavit," of the claimant's right and the escape of the fugitive, to give a certificate of the matters proved, to the claimant, which certificate is to be a sufficient warrant for the removal of the fugitive. Now, he who, upon proofs submitted to him, is to ascertain whether the matters in question are made out to his satisfaction, is necessarily required "to hear and determine" the case depending upon such matters; and therefore the duty imposed by the act of 1793 is the very duty—no other and no less—imposed by the act of 1850. As to the officers on whom this duty is imposed, the act of 1793 seems liable to much more plausible objection than that of 1850; for under the former "any magistrate of a county, city, or town corporate," was authorized to act, though neither of them was an inferior court or an officer of the United States;

whilst the commissioners empowered by the last law are officers of the United States, appointed constitutionally by the courts of the United States; but the former act, though liable to the same, or a greater objection, has been held constitutional by the Supreme and circuit courts of the United States, and by State courts of the very highest authority. Hence our first refutation of the objection we are now considering will assume this form.

The objection now taken to the constitutionality of the act of 1850 lies with equal or greater force against the act of 1793;

But the act of 1793, notwithstanding this objection, was constitutional;

Therefore, the act of 1850 is constitutional.

Secondly: The powers and duties referred to are not "judicial" in the sense in which that term is used in the Constitution.

The first section of the 3d article is in these words:

"The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, *both* of the *Supreme* and *inferior* courts, shall hold their offices *during good behavior;* and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office."

Now, it is evident, beyond denial, that "the judicial power" here meant, whatever it may be, can be vested *only* in *courts* whose judges hold their offices *during good behavior;* and therefore, whatever power, whether in its nature judicial or not, may be vested in a tribunal which is not a court, or in a court whose judges do not hold for good behavior, is not a part of "*the* judicial power" intended by this section of the Constitution. Thus, the various accounting officers of the Treasury—sometimes in virtue of their general official authority, and sometimes in virtue of special acts of Congress—do rightfully "hear and determine;" and from the beginning of the Government have, without objection, heard and determined cases between the United States and individuals, involving inquiries precisely similar in their nature to those "heard and determined" by courts of the United States and courts of the several States, in actions at common law and upon bills in equity; and therefore, though in their general character judicial, yet forming no part of "*the* judicial power" intended by the Constitution.

Again: The courts "established" by acts of Congress for the Territories of the United States do now exercise, and always have exercised, judicial power in cases at common law and in equity, although the judges are appointed only for four years, and therefore theirs is not a part of *the* judicial power mentioned in the Constitution.

Again: Under the act to establish the judicial courts of the United States, justices of the peace, and other magistrates of the States, as well as judges of the United States, have for sixty years possessed and rightfully exercised the authority to arrest persons charged with offences against the United States, "to hear" the proofs, "to determine" upon their sufficiency, and either to bail, commit, or discharge, as the circumstances may, in their judgment, require; and therefore this, though *a* judicial power, forms no part of *the* judicial power meant by the Constitution to be exclusively vested in courts of the United States.

Again: Under the act of Congress to carry into effect our extradition treaties with certain foreign States, a commissioner appointed by the court may issue his warrant to arrest one charged as a fugitive from justice, to the end that "the evidence of criminality may be heard and considered;" and, "if deemed sufficient by him to sustain the charge," he shall certify the same, &c., to the Secretary of State, who shall order the surrender of the offender, &c.; and, therefore, this, like the last case stated, though judicial in its general character, falls not within *the* judicial power mentioned by the Constitution.

Again: By our treaties with Turkey and China our citizens in those countries are exempted from liability to the local jurisdictions, and, by an act of Congress to carry into effect those treaties, judicial power is fully vested—in all cases, civil and criminal, affecting our citizens—in our ministers and consuls in those countries; and, therefore, the powers being clearly judicial in their nature, and yet vested in no court of the United States, but in diplomatic agents holding at the pleasure of the President, these powers, though exercised under the United States, form no part of *the* judicial power mentioned in the Constitution.

Now, if all these instances in which power of a judicial character has been conferred, not upon courts of the United States, whose judges hold their offices during good behavior, but either upon courts with judges of a limited tenure of office, or upon State magistrates, or upon executive and diplomatic officers holding at the pleasure of the PRESIDENT, are consistent with the Constitution—how can it be affirmed, or even plausibly conjectured, that the Fugitive Slave law is unconstitutional, because the magistrates to act under it are not ordained as courts, but are officers appointed by the courts, and holding during the pleasure of the courts—Congress being expressly authorized by the Constitution to vest the appointment of inferior officers in the courts of the United States?

But it being certain that there is a judicial power which, under the Constitution, can only be rightfully vested in a court of the United States, with judges holding their offices during good behavior, the question arises, What is that judicial power; and how is it to be distin-

guished from that exercised in the cases above specified? The answer is at hand. The 2d section of the third article declares that "*the* judicial power shall extend *to all cases*, in law and equity, *arising* under this Constitution, the laws of the United States, and treaties made, or which shall be made under their authority." Now, what are "cases arising," &c., within the meaning of this language? We give the answer in the words of Judge STORY, in his Commentaries: "A *case* is a *suit*, in law or equity, instituted *according to the regular course of judicial proceedings;* and when it involves any question arising under the Constitution, laws, or treaties of the United States, it is within the judicial power confided to the Union." (Story's Con., ch. 38, s. 1,640.) But, according to Mr. Justice STORY, a case is said to arise under the Constitution, law, or treaty, either when "a party comes into court to demand something conferred upon him by the Constitution, or a law, or a treaty," or "when the correct decision of the case depends on the construction of either."

And, therefore, the jurisdiction vested in the ministers and consuls to hear and determine cases arising in China, between American citizens there, is not in violation of the Constitution, because, besides other reasons, the treaty does not confer any right, nor does the parties' right depend on the interpretation of the treaty—the law executing the treaty by merely providing a tribunal in China to hear cases arising, independent of the law or treaty, and to be judged of by rules having no connexion with or dependence upon any construction of the law or treaty; and hence these are not *cases* arising under the Constitution, or law, or treaty.

And so also a proceeding under the Fugitive Slave law is not a "*case*" arising under the Constitution, or a law of the United States, because neither confers the right of the master to the service of the slave, nor can the decision upon that right depend upon a correct interpretation of either; the right is conferred by the local law of the State from which the fugitive may have fled, and depends altogether upon a correct interpretation of that law; to "hear and determine" that right, to interpret that law, does not belong to the judicial power of the United States; but the United States being bound under the Constitution to cause the delivery up of the fugitive, as under the extradition treaties to deliver up fugitives from foreign countries, Congress directs the surrender in each case to be made in such manner, and through the agency of such officers, executive or judicial, as its wisdom may deem best.

But further, on the authority of Mr. Justice STORY, "*a case*" to which, within the meaning of the Constitution, the judicial power of the United States extends, "is a suit instituted according to the regular course of judicial proceedings."

And on the same authority the provision of the Constitution for the arrest and removal of fugitive slaves contemplates "summary ministerial proceedings, and *not* the ordinary course of judicial investigations."—(Story, ch. 40, s. 1,806.)

Therefore a proceeding for the delivery up of a fugitive slave is not a "case" within the meaning of the Constitution; and hence it follows that it is not within that judicial power which the Constitution vests in courts of the United States.

In order to be clearly understood—as so much disingenuous sophistry has been used to mystify this matter, and thereby produce prejudice and aggravate opposition to the Fugitive Slave law—we will state this distinction again, and more concisely.

According to the most eminent jurists of the country, to constitute a case falling within the judicial power, as defined by the Constitution of the United States, so far as concerns our present inquiry, two conditions must be found. First, there must be something demanded which is conferred by the Constitution, or a law or treaty of the United States, or a correct decision upon the demand must depend on the construction of them or one of them. Secondly, this demand must be made by a suit instituted according to the regular course of judicial proceedings.

And, therefore, as these conditions are not found in the proceeding for a fugitive slave, such proceeding is not, according to the Constitution, "a case" falling within "*the* judicial power of the United States."

Upon consideration of all these instances, and the rule of discrimination which we have stated and illustrated, it is evident that a tribunal acting under the United States may be, in strict and proper speech, a judicial tribunal with the functions of a court, and yet not be a court of the United States, within the meaning of the Constitution, and not possess any part of *the* judicial power mentioned by the Constitution—of which the territorial courts and the ministers and consuls in China and Turkey are examples; and also, that a tribunal may exercise, under the authority of the United States, certain judicial powers, and yet not be properly a court at all; while, by reason of this exercise of judicial powers, it may not improperly be called, in a general sense, a judicial tribunal; while in reference and contradistinction to the specific meaning of the terms "judicial power" and "courts," as used in the Constitution, its proceedings may and should be termed summary ministerial proceedings, and not judicial proceedings; and the tribunal itself cannot, in strictness of speech, be called a court—of which, magistrates and commissioners under the law to carry into effect extradition treaties, and the Fugitive Slave law, and the proceedings had before them, respectively, are examples.

In every investigation of the meaning and force of words used in the Constitution, we ought ever to bear in mind that our forefathers had been English subjects, as colonies had always possessed the system of English law and jurisprudence, and were familiar with that system, both as it existed in the mother country, and as, with some modifications, it existed here. To this system of law and jurisprudence we must refer for a just interpretation of every provision of that instrument which speaks of courts and judicial proceedings. Thus expounded, we shall come to the conclusion that the judicial power which that instrument intended to vest in courts of a particular organization was the same which the courts in England, and in the Colonies and States, had uniformly possessed and exercised. To enforce the perpetual deposit of that power in courts whose judges should be independent of legislative or executive caprice, and responsible only for a wilful abuse of their high trust, was the purpose of the framers of that instrument; but it was not their purpose to enlarge the scope of that judicial power beyond the boundaries which defined it in the original systems of the mother country and the States. By "cases in law and equity," and by "the judicial power of the United States," they meant not every instance of investigations in their nature judicial, but judicial proceedings like those which in England and the States had been uniformly committed to the decision of judicial courts. To place such judicial power in independent courts, the public good—the safety of the nation, and the rights of the citizens, required; this, therefore, was wise and patriotic, and this they intended. But to give to their expressions a vague and indefinite meaning—to embrace within them and confine to the judicial branch of the Government all inquiries and investigations in their general nature judicial—however arising and for whatever purpose to be made or prosecuted—would be to impose upon the nation the most complicated, vexatious, and unwieldy judiciary system ever known in the world; to embarrass the Executive and administrative operations of the Government by the constant intervention of judicial courts, with judges having fixed salaries and an independent tenure of office; and thus would convert this wise and excellent provision of the Constitution into an intolerable nuisance.

Whether Mr. Samuel E. Johnson was led away by this false method of interpretation, without seeing the consequences to which, if followed out, it would lead; whether he was ignorant of the good old legal saying *qui hæret in litera hæret in cortice*, and therefore was not warned of the danger to which he was exposed, or wilfully stuck himself fast in the letter, because he thought the Constitution had nothing but bark in its composition, and thus fell into the sincere though strange mistake of supposing the law unconstitutional; whether he is one of the "higher-law" party, and having strong abolition tendencies, was unwilling to put any restraint upon the exercise, by himself or others, of "hospitality to the innocent wayfarers" who throng the purlieus of New York and Brooklyn, and, therefore, declined, upon grounds of immorality and consequent invalidity of the law, to accept the place of commissioner; or, finally, whether he felt himself treated with less respect than was due to him, personally or officially, because the framers of the Fugitive Slave law did not "expressly ordain and establish HIM as an inferior court," or confer "power upon *him directly*," as Mr. Samuel E. Johnson, or as "the county judge of King's county," but left him, among the undistinguished mass of citizens, to the discovery and selection of the judges of the circuit court; and so mortified vanity secretly prompted the rejection of the office, in scornful resentment of the offered indignity; whether, we say, any, or if any, which of these suppositions may truly explain his conduct, we will not undertake to "determine," lest we should be suspected of intruding ourselves into the judicial office, in violation of the Constitution. But as Mr. Johnson is a judge, we will, considering the value of the reasons given by him for his present decision, venture to commend to his favorable regard, as fit to guide his future course, the advice said to have been offered by Lord Mansfield to the colonial judge, "Always *decide boldly*, and give *no reasons*."

APPENDIX.

OPINION OF THE ATTORNEY GENERAL.

ATTORNEY GENERAL'S OFFICE,
18th September, 1850.

SIR: I have had the honor to receive your note of this date, informing me that the bill commonly called the Fugitive Slave bill, having passed both Houses of Congress, had been submitted to you for your consideration, approval, and signature, and requesting my opinion whether the *sixth* section of that act, and especially the last clause of that section, conflicts with the provision of the Constitution which declares that "the privilege of the writ of 'habeas corpus shall not be suspended, unless when, 'in cases of rebellion or invasion, the public safety 'may require it?"

It is my clear conviction that there is nothing in the last clause, nor in any part of the *sixth* section, nor indeed in any part of the provisions of the act, which suspends, or was intended to suspend, the privilege of the writ of *habeas corpus*, or is in any manner in conflict with the Constitution.

The Constitution, in the *second* section of the *fourth* article, declares, that "no person held to ser-'vice or labor in one State, under the laws thereof, 'escaping into another, shall, in consequence of 'any law or regulation therein, be discharged from 'such service or labor, but SHALL be delivered up 'on claim of the party to whom such service or la-'bor may be due."

It is well known and admitted, historically and judicially, that this clause of the Constitution was made for the purpose of securing to the citizens of slaveholding States the complete ownership in their slaves, as property, in any and every State or Territory of the Union into which they might escape. (*Prigg* vs. *Commonwealth of Pennsylvania*, 16 *Pet.* 539.) It devolved on the General Government, as a solemn duty, to make that security effectual. Their power was not only clear and full, but, according to the opinion of the court in the above cited case, it was *exclusive;* the States, severally, being under no obligation, and having no power to make laws or regulations in respect to the delivery of fugitives. Thus the whole power, and with it the whole *duty*, of carrying into effect this important provision of the Constitution was with Congress. And, accordingly, soon after the adoption of the Constitution, the act of the 12th February, 1793, was passed, and that proving unsatisfactory and inefficient, by reason (among other causes) of some minor errors in its details, Congress are now attempting by this bill to discharge a constitutional obligation, by securing more effectually the delivery of fugitive slaves to their owners. The *sixth* and most material section in substance declares, that the claimant of the fugitive slave may arrest and carry him before any one of the officers named and described in the bill, and provides that these officers and each of them shall have *judicial* power and jurisdiction to hear, examine, and decide the case in a summary manner; that, if upon such hearing, the claimant, by the requisite proof, shall establish his claim to the satisfaction of the tribunal thus constituted, the said tribunal shall give him a certificate, stating therein the substantial facts of the case, and authorizing him, with such reasonable force as may be necessary, to take and carry said fugitive back to the State or Territory whence he or she may have escaped, and then in conclusion proceeds as follows: "The certificates in this and 'the first section mentioned shall be conclusive of 'the right of the person or persons, in whose favor 'granted, to remove such fugitive to the State or 'Territory from which he escaped, and shall pre-'vent all molestation of such person or persons by 'any process issued by any court, judge, magis-'trate, or other person whomsoever."

There is nothing in all this that does not seem to me to be consistent with the Constitution, and necessary, indeed, to redeem the pledge which it contains—that such fugitives "shall be delivered up on claim" of their owners.

The Supreme Court of the United States has decided that the owner, independent of any aid from State or National legislation, may, in virtue of the Constitution and his own right of property, seize and recapture his fugitive slave, in whatsoever State he may find him, and carry him back to the State or Territory from which he escaped. (*Prigg* vs. *Commonwealth of Pennsylvania*, 16 *Pet.*, 539.) This bill, therefore, confers no right on the owner of the fugitive slave; it only gives him an appointed and peaceable remedy, in place of the more exposed and insecure, but not less lawful, mode of self-redress. And as to the fugitive slave, he has no cause to complain of this bill; it adds no coercion to that which his owner himself might, at his own will, rightfully exercise; and all the proceedings which it institutes are but so much of orderly judicial authority, interposed between him and his owner, and consequently of protection to him, and mitigation of the exercise directly by the owner himself of his personal authority. This is the constitutional and legal view of the subject, as sanctioned by the decisions of the Supreme Court; and to that I limit myself.

The act of the 12th February, 1793, before alluded

to, so far as it respects any constitutional question that can arise out of this bill, is identical with it. It authorizes the like arrest of the fugitive slave, the like trial, the like judgment, the like certificate, with the like authority to the owner, by virtue of that certificate as his warrant, to remove him to the State or Territory from which he escaped. And the constitutionality of that act, in all those particulars, has been affirmed by the adjudications of State tribunals, and by the courts of the United States, without a single dissent, so far as I know.—(*Baldwin's C. C. R.*, 577, 579.)

I conclude, therefore, that so far as the act of the 12th February, 1793, has been held to be constitutional, this bill must also be so regarded, and that the custody, restraint, and removal, to which the fugitive slave may be subjected under the provisions of this bill, are all lawful, and that the certificate to be granted to the owner is to be regarded as the act and judgment of a judicial tribunal having competent jurisdiction.

With these remarks as to the constitutionality of the general provisions of the bill, and the consequent legality of the custody and confinement to which the fugitive slave may be subjected under it, I proceed to a brief consideration of the more particular question you have propounded in reference to the writ of *habeas corpus*, and of the last clause of the *sixth* section, above quoted, which gives rise to that question.

My opinion, as before expressed, is, that there is nothing in that clause or section which conflicts with, or suspends, or was intended to suspend, the privilege of the writ of *habeas corpus*. I think so, because the bill says not one word about that writ; because, by the Constitution, Congress is expressly forbidden to suspend the privilege of this writ, "unless when in cases of rebellion or invasion the public safety may require it;" and therefore the suspension by this act (there being neither rebellion nor invasion) would be a plain and palpable violation of the Constitution; and no intention to commit such a violation of the Constitution, of their duty, and their oaths, ought to be imputed to them upon mere constructions and implications; and thirdly, because there is no incompatibility between these provisions of the bill and the privilege of the writ of *habeas corpus*, in its utmost constitutional latitude.

Congress, in the case of fugitive slaves, as in all other cases within the scope of its constitutional authority, has the unquestionable right to ordain and prescribe, for what causes, to what extent, and in what manner persons may be taken into custody, detained or imprisoned. Without this power they could not fulfil their constitutional trust, nor perform the ordinary and necessary duties of government. It was never heard that the exercise of the legislative power was any encroachment upon or suspension of the privilege of the *habeas corpus*, to its only become such when it is used to cover a conflict can be supposed to exist. It is not within the province or privilege of this great writ to loose those whom *the law* has bound. That would be to put a writ granted by the law, in opposition to the law—to make one part of the law destructive of another. This writ follows the law, and obeys the law. It is issued upon proper complaint, to make inquiry into the causes of commitment or imprisonment, and its sole remedial power and purpose is to deliver the party from "all manner of *illegal* confinement." (*3 Black. Com.*, 131.) If, upon application to the Court or Judge for this writ, or if, upon its return, it shall appear that the confinement complained of was *lawful*, the writ in the first instance would be refused, and in the last the party would be remanded to his former *lawful* custody.

The condition of one in custody as a fugitive slave, under this law, so far as respects the writ of *habeas corpus*, is precisely the same as that of all other prisoners under the laws of the United States. The privilege of that writ remains alike to all of them, but to be judged of—granted or refused—discharged or enforced—by the proper tribunal, according to the circumstances of each case, and as the commitment and detention may appear to be legal or illegal.

The whole effect of the law may be thus briefly stated. Congress has constituted a tribunal with exclusive jurisdiction, to determine summarily, and without appeal, who are fugitives from service or labor under the *second* section of the *fourth* article of the Constitution, and to whom such service or labor is due. The judgment of every tribunal of exclusive jurisdiction, where no appeal lies, is of necessity conclusive upon every other tribunal, and therefore the judgment of the tribunal created by this act is conclusive upon all tribunals. Wherever this judgment is made to appear, it is conclusive of the right of the owner to retain in his custody the fugitive from his service, and to remove him back to the place or State from which he escaped. If it is shown upon the application of the fugitive for a writ of *habeas corpus*, it prevents the issuing of the writ—if, upon the return, it discharges the writ and restores or maintains the custody.

The view of the law of this case is fully sustained by the decision of the Supreme Court of the United States in the case of *Tobias Watkins*, where the Court refused to discharge upon the ground that he was in custody under the sentence of a court of competent jurisdiction, and that judgment was conclusive upon them.—(*3 Pet.* 202.)

The expressions used in the last clause of the sixth section, that the certificate therein alluded to "shall prevent all molestation" of the persons to whom granted, "by any process issued," &c., probably mean, only what the act of 1793 meant, by declaring a certificate under that act a sufficient warrant for the removal of a fugitive, and certainly do not mean a suspension of the *habeas corpus*.

I conclude by repeating my conviction, that there is nothing in the bill in question which conflicts with the Constitution, or suspends, or was intended to suspend, the privilege of the writ of *habeas corpus*.

I have the honor to be, very respectfully, sir, your obedient servant,

J. J. CRITTENDEN.

To the President.